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File No. S. Notices/49

Legal DEPARTMENT

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Subject:— Papers relating to the notices of intended suits.

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C O N T E N T S.

Legal Department File No.3 Notices/49.

Sr.No.	N.I./O.No.	Subject.	Pages.
		Papers relating to notices of intended suits.	
1.	354 11.1.1945	Legal notice- P.T.Ankleswaria Contractor vs. Dominion of India.	1 - 8
2.	4419 22.4.1949	Notice of suit under sec.80 Civil Procedure Code served by one Ahmedhusein Mohmed husein Bagwan on the Secretary to Govt.,Home Department for the recovery of the payment of his xx outstanding bills for supply of vegetable to the Refugee camp at Sabarmati	9-12
3.	6788 23.6.1945	Notice of suit by Mr. Khaliuddin Fivajiddin of Nurud District East Khandesh claiming from Govt. Rs.2,000/- as damages on account of refusal of the forest officers to allow him to remove certain felled material from xf forest lands at Nurul	13-14
4.	10468 15.9.1945	Recovery of interest free loan from Baba Gaikharam Gorpade	15-16
5.	11939 26.10.1949	Notice of suit given by Gagrat & Co. for the Indian Construction Co. Ltd. threatening to file a suit against Govt. for recovery of Rs.1E5023 as damages for breach of contract	17-20

Nair/-

No.354

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 11th January 1949.

From

Mr P.M. Lad, Esquire, I.C.S.,
Secretary to Government and
Remembrancer of Legal Affairs.

To

Lt. Colonel,
A.A. & Q. M. G.,
H.Q., Bombay Area,
Kolaba.

Sub: Legal Notice: P.T. Anklesaria,
Contractor Vs. Dominion of
India.

Sir,

With reference to your letter No.339/84/
/A2, dated the 23rd November 1948, on the above subject, I have the honour to forward herewith a copy of my opionon ~~of~~ in the matter.

Papers of the case received with your letter under reference are returned herewith.

Yours faithfully,

Id./PML 8.1.

Remembrancer of Legal Affairs.

Nair/-

O P I N I O N

Under the original contract the contractor had agreed to supply chickens weighing from one to one and a half pound at the rate of Rs.10-10-0 per dozen, or 0-14-2 per each chicken. Subse - quently, he alleged a trade usage whereunder he claimed to be paid on the basis of one pound as equivalent to one chicken irrespective of the actual weight of the chicken. The military authorities were not agreeable to this. Since the contractor demanded payment at a specified rate per pound and not per dozen, they took the average weight of a chicken to be 1½ pound, a dozen chickens weighing 15 pounds and refixed the rate at 0-11-4 per pound which is equal to 0-14-2 per each chicken or Rs.10-10-0 per dozen. Now it is obvious that if the actual number of chickens delivered was equal to their weight in pounds, in other words, if each chicken supplied weighed exactly one pound, then, whether the contractor was paid at Rs.0-11-4 per pound or 0-14-2 per chicken, the total amount payable to him would be the same. But probably the dispute has arisen because the number of chickens actually supplied might not have been equal to the pounds in weight. Taking a concrete instance, one hundred chickens would weigh one hundred and twenty five pounds if the average weight of chickens supplied was 1½ pound. The contractor therefore claims that under the alleged trade usage, he should be paid at the contract rate of 0-14-2 per chicken for one hundred and twenty five chickens even though the actual number of chickens supplied was only

100. That this is probably his claim appears from paragraph 7 of the notice where he says that the total weight of the chickens delivered by him was 1,98,514 pounds. Of course he concludes this paragraph by alleging that "the average weight of the chicken is as a matter of fact one pound and that the total number of chickens in fact supplied by him to the Government was about 1,98,541." This must be incorrect because, as stated before, if the number was exactly equal to the pounds of weight, there would be no dispute. It is implicit in paragraphs 6 and 7 of the plaint that the number of chickens actually supplied was less.

On this assumption there is no substance in any of the plaintiff's contentions. The alleged trade usuage, assuming that the plaintiff is able to prove its existence cannot be binding on Government. Under the fifth proviso to section 92 of the Evidence Act, any usage or custom by which, incidents not expressly mentioned in any contract, are usually annexed to contracts of that description, may be proved provided that the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract. The usage whereunder the contractor claims payment on the basis of one pound of chicken equivalent to one chicken irrespective of the number of chickens supplied is clearly repugnant to and inconsistent with his contract which expressly provides for payment at a specified rate per dozen and therefore such a usage cannot be allowed to be proved.

Secondly, under the amended contract the

contractor ..

contractor has agreed to accept payment at the rate of 0-11-4 per pound. He contends that he agreed to the amendment under protest and therefore it is not binding on him. Butthere is no evidenceto show that he accepted the new contract under "coercion" as defined in section 15 of the Indian Contract Act. There was no compulsion on him to enter into the new contract. He could have refused the offer of Government and sought his remedies in a Court of Law. As a matter of fact this contention is irrelevant because while repudiating the new contract he does not fall-back upon the original contract. If he did so, the difficulty would be solved because, as stated earlier, whether Government pays him at the rate of 0-14-2 per chicken or 0-11-2 per pound, the total payment to him would be constant. But the contractor tries to imply into the original contract something which is completely inconsistent with the express terms thereof. If this is the right view, the threatened suit would be defensible.

Nair/-

9-11

Office of the R.L.A.

I think this case will have to be settled amicably out of court. The Collector's reports of 9th February and 22th February 1949 (pages 31 and 39 ante) show that the dealer had been persuaded by some social workers to supply vegetables at his cost price and that he agreed to so as an act of social service. The arrangement was approved by the Assistant Refugee Officer on the recommendations of the social Workers, and its working depended almost entirely upon the good-will of the dealer. There was in this case no valid enforceable contract between Government and the dealer whereunder the latter could be held bound to suppl vegetables at his cost price. Moreover the bills which he submitted and which were finally rejected by the Collector were certified for payment by the Marketing Officers and by the concurrent auditor and it will now be hardly open to Government to argue that those officers did not check the bills correctly. The arrangement moreover was that the dealer will charge his cost price. The Collector has on the other hand, evidently made the deductions on the basis of the market rates supplied by the Ahmedabad Co-operative Fruit and Vegetable Growers Association. It is not clear from these papers whether any inquiry as regards the actual cost price paid by the dealer was made or not. The deale has purchased his supplies not from the aforesaid association but from a rival organization viz. The Rajnagar Vegetable Market. In his letter of 22nd January 1949 to the Collector he has stated that the prices charged by him may be verified from the dealers in the Rajnagar Market. Therefore, even assuming that he was under any legal obligation to supply at cost price and that he charged at excess rates, the exact amount of excess will have to be

letermined with reference to the price paid by him to his own suppliers and not with reference to the price quoted at latter date by another group of dealers. Looking to all the circumstances of the case, Government is not on very firm ground and it will be best to come to an amicable settlement.

Id/ PML. 21.4.

Remembrancer of Legal Affairs.

J.R. to Relief and Rehabilitation Department, No.4419 dated the 22nd April 1949

Nair/-

Office of the R.L.A.

The only question in this case is whether Mr. Khaliuddin can be prevented from removing the tree ~~x~~ growth in these lands on the ground that the value and quantity of such growth was grossly under estimated through fraud or misrepresentation by the Subordinate Forest Officers. It cannot be denied that there was an outright sale of the forest growth for Rs.45/- to the plot-holders who in turn sold them to the plaintiff. Also, none of them can, in the present state of evidence, be blamed for the gross under valuation of the material. The transaction can, therefore, be voided if at all on the ground (1) that it ~~xx~~ was an unconscionable bargain or (2) that there was gross inadequacy of consideration. The doctrine of unconscionable bargain is enacted in section 16(3) of the Indian Contract Act. Under that section it is not enough to show that the transaction was unconscionable. It must further be shown that the person who obtained an unfair advantage out of the other was in a position to dominate the will of the other. It is only the concurrence of these two elements that can justify a Court in granting relief. It can hardly be maintained in this case that the purchaser or either of the plot-holders was in a position to dominate the will of the Forest Officers who sold the tree growth or Rs. 45/-. Similarly in the absence of fraud, coercion or undue influence, the sale cannot be avoided merely on the ground of inadequacy of consideration. In adequacy of consideration is only a circumstance which the Court can take into consideration in determining whether the consent of the promisor was freely given (Vide Expl. 2 of section 25 of the Indian Contract Act). It is possible that the plot-holders or the plaintiff might have been aware of the real value of the tree growth but that knowledge alone is not sufficient for avoidance of the sale. In short, in the absence of fraud or misrepresentation on his part, the plaintiff is not liable to give up the advantage he derived from the transaction, and the suit would be indefensible.

Id.PML 26.5.

Remembrancer of Legal Affairs

U.R. to R.D.No.5756 dated the 23rd May 1962

No.10462
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 15th September 1949.

To

The Commissioner, Central Division,
and Secretary S.P.W.R.Fund, Poona.

Sub: Recovery of interest free loan
from Babu Salharam Gorpade.

Sir,

With reference to your endorsement No.PWRF 8/11/17 dated the 16th May 1949 forwarding a letter No.PFSR-I/B 90 dated 28th February 1949 from the Collector and President District S.S. & A Board, Nasik, on the subject noted above, I am directed to state as follows:-

The agreement for the grant and repayment of the loan has been executed by the Collector of Nasik on behalf of the Committee of Administration. The agreement is signed not by the Collector but by the Mamlatdar. It is learnt from the Home Department (SPI) that the Collector or the Mamlatdar had not been specially empowered to executet the agreement on behalf of the Committee. The agreement is, therefore, void ab initio for want of an proper authority to the Collector or the Mamlatdar. The principal debtor could have been sued on the original debt but as there is no chance of recovering the decretal amount from him it would be waste of time and money to bring an action against him.

The surety's liability arises by virtue of the surety bond executed by him. That bond was also executed before and must, therefore, be deemed to be a bond between the surety and the Mamlatdar. The Mamlatdar

not having been authorised by the Committee to take such bond, the bond too is invalid and consequently no suit can lie against the surety.

The amount of the loan will have to be written off.

The papers of the case accompany.

Yours faithfully,

Id.
for Remembrancer of Legal Affairs.

Nair/-

Office of the R.L.A.

A notice of suit has been given by Gagrat and Company, solicitors for the Indian Construction Co. Ltd. threatening to file a suit against Government for recovery of Rs.1,80,023 as damages for breach of contract. It appears that the Indian Construction Co. Ltd. had entered into a contract with the State of Lunawada for the construction of Military Barracks at Lunawada in May 1948. After the merger of the Lunawad State with the Province of Bombay in June 1948, it appears that the contractors were informed by the Collector to stop the x construction work till they received further orders from Government. On 31st October 1948, they received another order to stop the construction work pending further instructions from the Government and it is alleged that since then no instructions have been given to them by Government and therefore the contractors claim damages from Government by virtue of clause 6 of the agreement between them and the Lunawada State.

In this connection a reference was made by the Government of Bombay to Government of India for advice whether the construction of the Military Barracks at Lunawada should be continued. On 25th September 1948, the Government of India wrote to the Government of Bombay asking for further information regarding the costs already incurred on the Barracks and the costs that would be incurred to complete them. This information was sent to the Government of India in February 1949 and since then no further progress has been made for settling the claim of the contractors. The notice was give x on 14th May 1949.

So far as the liability of the Government for breach of the agreement entered into by the Rulers with private parties before the merger of the State is concerned, the legal position has been made clear in the

previous opinions of the R.L.A. According to the view taken in those opinions, ordinarily there is no legal obligation on the Provincial Government to abide by the agreement entered into by the Rulers of the State with private parties before merger of the State with the Province of Bombay. There may however be peculiar circumstances attendant upon each individual case in which repudiation of the agreement may be fraught with difficulties. In the present case, so far as can be seen from the papers, no decision seems to have been taken as to whether the agreement with the Indian Construction Co. is to be repudiated or not. Until that question is decided, the question of Government's liability for breach of the contract would be premature. The District Magistrate, Panch Mahals, states in his report of 28th January 1949 that the P.W.D. has taken over charge of the works on integration. It is not clear whether this means that the P.W.D. has taken over charge of the works already completed by the contractors or whether the P.W.D. has undertaken the work of completing the construction of the HM Military Barracks. In the latter case, there is no reason why the contract should be repudiated, and why the contractors themselves should not be allowed to complete the works. It would x perhaps be more economical and more convenient to allow the contractors to complete the works instead of paying them damages or compensation for repudiation of the contract and then allowing the P.W.D. to complete the works.

The contractors appear to have already constructed the works costing about Rs.30,000/-. These costs may have to be paid to them. The special Officers opinion in this connection, at. p.61, is correct.

Id.MML.
25/10
Remembrancer of Legal Affairs.

U.R. to P. & S.D.No.11928, dated the 26th October 1949.